

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 726 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

RAJEDNRAKUMAR CHANDULAL SHAH

Appearance:

1. Criminal Appeal No. 726 of 1991
MS HARSHA DEVANI, APP for Appellant No.
MR DK MODI for Respondent No. 1-2
MR MD MODI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 02/07/2004

ORAL JUDGEMENT

1. The State of Gujarat has approached this Court

under Section 378 of the Code of Criminal Procedure to challenge the judgment and order of acquittal passed by the Ld. Judicial Magistrate First Class, Botad dated 10th July, 1991 in Criminal Case No. 961 of 1987, which was filed against the respondents under the provisions of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act').

2. The case of the prosecution is that on 28th April, 1987 at about 8.15 p.m. the complainant - Food Inspector was on his usual round in company of the Chief Food Inspector and another Food Inspector and they had visited the business place of the respondents, who were dealing in the grocery. The Food Inspector gave his identity and expressed his desire to collect the sample of turmeric powder, chilli powder and coriander powder. The Food Inspector thereafter collected sample of turmeric powder from a pack of 5.00 Kgs. under the brand name of 'top', which was packed on 23rd March, 1987. The sample was divided into three parts and it was filled in cleaned glass bottles. The purchase price of the same was paid to the respondents. It is the prosecution case that after collecting the sample, the bottles were sealed and packed in the manner provided under the P.F.A. Rules and on completion of the said process, the panchnama was drawn. One bottle was thereafter sent to the Public Analyst at Baroda for analysis and two samples were sent to the Local Health Authority, namely the Deputy Commissioner (Food) at Gandhinagar. Upon receiving the report from the Public Analyst it was found that the offending article did not conform to the standards prescribed by the Act and the P.F.A. Rules and, therefore, it was adulterated. The Food Inspector, thereafter forwarded the report alongwith other relevant papers pertaining to this case to the Local Health Authority for obtaining its consent u/S. 20 of the Act. The Local Health Authority after going through the material placed before it, by letter dated 20th June, 1987 accorded consent to the Food Inspector to prosecute the present respondents for committing offences under section 7 read with section 16 of the Act. Accordingly the Food Inspector instituted the complaint before the Ld. Magistrate, who thereafter forwarded copy of the report of Public Analyst alongwith the copy of the complaint to the respondents in accordance with the provisions of section 13 of the Act and also intimated that if they so desired, they could make appropriate application before the Ld. Magistrate to get the sample of the offending article examined by the Director of Central Food Laboratory (for short 'DCFL'). In response to the same, the respondents appeared and an application

was made for sending the sample to DCFL. The Ld. Magistrate granted the application and summoned one sample lying with the Local Health Authority for being sent to DCFL. On receipt of the sample, the Ld. Magistrate completed the formalities at his end and despatched the sample for its examination by the DCFL. The DCFL received the sample and on completion of its analysis, forwarded a report. The said report is at Exh. 32. The said report also indicated that the sample was adulterated.

2.1. At the trial, since accused pleaded not guilty, the prosecution led oral evidence and also produced documentary evidence in support of its case. So far the oral evidence is concerned, it consisted of P.W. Babubhai Joitaram, the Food Inspector, who at the relevant time was attached to the Office of the Commissioner, Food and Drugs Control Administration, Gandhinagar and P.W. Jayesh Himatlal Shah, the panch witness, who has not supported the prosecution. The prosecution has also relied on several documents such as report of the Public Analyst, report of the DCFL, the consent of the Local Health Authority, the panchnama, etc.

2.2. On completion of the trial, the Ld. Magistrate came to the conclusion that the Food Inspector, while collecting the sample, was required to shake the bag/bottle containing turmeric powder so as to get the representative sample. It was further held that the consent was not accorded by the competent authority. He also came to the conclusion that there was violation of provisions of rule 4, which is held to be mandatory. On these grounds, the Ld. Magistrate concluded that the prosecution had failed to establish the case against the respondents and, therefore, he passed order of acquittal in favour of the respondents. It is this order of acquittal, which is now sought to be challenged by the State in this appeal.

3. Miss Harsha Devani, Ld. APP appearing for the State has submitted that the conclusions drawn by the Ld. Magistrate are absolutely erroneous and the judgment and order of acquittal based on such conclusions are required to be quashed and set aside. She has submitted that so far the turmeric powder is concerned, it is not a liquid or semiliquid like milk, but is in the form of powder, which would not require any shaking or churning before collection of the sample. She has further submitted that the Local Health Authority viz. the Deputy Director or the Deputy Commissioner, Food and Drugs Control

Administration is one and the same person and the consent given by it is valid and legal. She has also submitted that there is no breach of rule 4 as the report of the DCFL shows that the seals on the container and outer cover of the sample were adequate and they were found to be in order. She has also submitted that this appeal is required to be allowed.

3.1. As against that, Mr. D.K. Modi, learned advocate appearing for the respondents has supported the judgment and order of the Ld. Magistrate. He has submitted that the grounds on which the acquittal order has been passed by the Ld. Magistrate are proper and they are duly covered by the judgments of this Court. Controversy with regard to Local Health Authority is concerned, he has placed reliance on the judgment of this Court, which would be referred to in due course of this judgment. He has, therefore, prayed that when there is breach of mandatory provisions of the Act as well as the Rules, the prosecution must fail.

4. Having carefully gone through the evidence with a view to reappraise it and having carefully considered the rival submissions, it appears that the sample which was collected by the Food Inspector of turmeric powder was found to be adulterated. Hence, the respondents were required to be prosecuted. So far the evidence of the Food Inspector is concerned, it throws adequate light on the facts regarding collection of the sample and the compliance with the requisite formalities prescribing the manner in which the sealing and packing has to be done of the container in which the offending article is filled in, etc. In the cross-examination of the Food Inspector, this aspect is not controverted by the defence. The defence has, however, laid much stress on the issues with regard to grant of consent by the competent authority and the noncompliance of provisions of rule 4 of the Rules. Mr. Modi has also made submissions on this aspect and in support of the said submissions, he has placed reliance on two judgments of this Court. So far noncompliance of rule 4 is concerned, he has placed reliance on the judgment delivered by the learned Single Judge of this Court [Coram : B.C. Patel, J. as he then was] in the case of State of Gujarat v/s. Bhupendra M. Mehta reported in 1999 (1) G.L.H. p. 227. In the facts of the case on hand, if the report of the DCFL is perused, it mentions in para. 2 thereof as under :-

"2. The conditions of the seals on the container and the outer covering on receipt was as follows :-

The seals on sample container were intact and tallied with the specimen impression, seal given on copy of form VII. The seal on outer cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of memorandum forwarded separately."

According to Mr. Modi, this report does not reflect that the seal of the Ld. Magistrate on the container of the sample was also verified and it was found to be in order by the DCFL. According to him, this provision is mandatory and this aspect is missing. It should render the case of the prosecution unacceptable. He has placed reliance on the observations made by this Court in paras. 6 and 7 of the decision rendered in the case of State of Gujarat [supra] :-

"6. From the report of the Central Food Laboratory, it is clear that the Central Food Laboratory has mentioned the condition of the seals on the container and the outer cover on receipt as under :

"The seals on sample container were intact and tallied with the specimen impression of seal given in copy of Form VII. The seals on outer cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of memorandum forwarded separately."

7. Learned Advocate further submitted that on receiving an application for forwarding the sample to the Central Food Laboratory, it is necessary for the Court to call for the sample from the Local (Health) Authority, and on receipt of the part of the same from the Local (Health) Authority, the Court has to ascertain that the mark and seal or fastening as provided in clause (b) of s/s. 1 of Section 11 of the Act are intact and the signature or thumb impression, as the case may be, is not tampered with. After satisfying this, the Court has to despatch the part of the sample under its own seal to the Director of Central Food Laboratory. In the instant case, there is nothing to indicate that the Trial Court has followed the procedure as stated hereinabove. This Court could have, with

the aid of Section 14(e) of the Evidence Act, presumed the procedure to have been followed, but in the instant case, there is nothing on the record to show that the Court while forwarding the sample has forwarded separately the memorandum to the Director of Central Food Laboratory in Form I. Rule 4 (1)(a) of the rules contemplates that the sample of food for analysis under sub-section (2) of Section 13 of the Act shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director. Sub-rule (2) of Rule 4 requires that the container as well as the outer covering of the packet shall be marked with a distinguishing number. Under Section 13 (2.B), duty is cast upon the Court to ascertain that mark and seal or fastening as provided in clause (b) of sub-section 1 of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with. The legislature provided that after verifying these aspects the Court has to dispatch the part, or as the case may be, one of the parts of the sample under its own seal to the Central Food Laboratory. The Court has to forward a copy of the memorandum and specimen impression of the seal used to seal the container separately by registered post to the Director under sub-clause (3) of Rule 4. Duty is cast on the Director or the officer authorised by him to compare the seals on the container and the outer cover with specimen impression received separately and also to note the condition of the seals thereon. In the instant case, as stated in the foregoing paragraph it is mentioned in the analysis report of the Central Food Laboratory that the seals were intact and tallied with the specimen impression. It is clear that Form No. VII was forwarded. Form No. VII in accordance with Rule 17 is required to be forwarded to the Public Analyst by the Food Inspector concerned and not by the Judicial Magistrate First Class. Mr. Vora submitted that if the report would have indicated that the Central Food Laboratory received the memorandum separately in Form I, then certainly this Court can draw a presumption that memorandum was forwarded separately and with specimen impression of the seal used to seal the container. However, in the absence of any material on record to indicate that the Court forwarded sample under its own seal or forwarded

memorandum as contemplated under Rule 4(1) of the Rules, it would not be possible to come to a conclusion that the Court forwarded the sample under its own seal. It appears that breach of Section 13 (2-B) is committed in so far as forwarding the sample under Court's seal is concerned. Central Food Laboratory in its report has referred to Form No. VII, but not Form No. I, and, therefore, under this circumstances, it is not possible to say that while forwarding the sample, the Court forwarded the same under its own seal. In the case of Bhagwandas Gurnomal v. State reported in 16 GLR 164, learned Single Judge referred the matter to a larger Bench wherein four issues were raised, one of which reads as under :

"Whether sub-rule (3) Rule 4 imposes a statutory obligation on the learned Magistrate to send to the Director of Central Food Laboratory, a copy of the memorandum along with the specimen of the seal of the Food Inspector used to seal the container or along with the seal of the Magistrate only?"

7.1. The Division Bench, after considering in detail relevant provisions of the Act and Rules, held that "justice must also appear to be done, and therefore the only interpretation that can be put on the mandatory provision of Section 13(2) and relevant Rule 4(3) is that the Court's seal has to be applied both to the container and the paper cover and it is the specimen impression of the Court seal which has to be sent separately by registered post to the Director along with a copy of memorandum under Rule 4(3). That is why even the memorandum in Form I in terms provides that a copy thereof and a specimen impression of seal used on the container and the cover by the court shall be sent separately by registered post. That seal is clearly court's seal within the meaning of Section 13(2) and Rule 4(3)."

7.2. It is clear that there is nothing to indicate that Court applied its own seal after ascertaining the facts that seal was intact and there was no tampering with signature or thumb impression. Record indicates that Court merely forwarded the sample with the memorandum having a seal of the Food Inspector. In view of this, no

reliance can be placed on the certificate."

Miss Devani has, however, drawn my attention to the pursis passed on by the respondents wherein it has been admitted that the sample which was produced by the Food Inspector contained the signatures and it was in sealed condition and the Court, after completing the requisite formalities, has sent it to the DCFL. This pursis, ofcourse, does not specifically mention whether the Ld. Magistrate had applied his seal on the container and specimen impression on the said seal was forwarded to the DCFL. The report indicates that these facts have not been stated. When these aspects are missing, as per the aforesaid judgment of this Court, the presumption can safely be drawn that the seal of the Ld. Magistrate was not there. If that be so, there would be noncompliance of mandatory provisions which would be fatal to the case of prosecution. I am in agreement with the aforesaid submission made by Mr. Modi on this count.

5. In view of the fact that the judgment is required to be upheld on the aforesaid count alone, I do not propose to deal with the other aspects of the case.

6. In the result, the appeal fails and it is dismissed.

[AKSHAY H. MEHTA, J.]

* Pansala.